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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI  
JEANNE HICKS, Clerk  
Deputy Chamberlain

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVEN CARROLL DEMOCKER, )  
 )  
Defendant. )  
\_\_\_\_\_ )

No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG  
JUDGE OF THE SUPERIOR COURT  
DIVISION 6  
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA  
TUESDAY, JANUARY 12, 2010  
A.M. SESSION

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
Motion for Re-examination of Conditions of Release

LISA A. CHANEY, RPR, CSR, CR  
Certified Reporter  
Certificate No. 50801

ORIGINAL

January 12, 2010

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER, DEPUTY.  
ALSO PRESENT: MS. DEB COWELL, PARALEGAL.  
FOR THE DEFENDANT: MR. JOHN SEARS,  
MR. LARRY HAMMOND, AND MS. ANNE CHAPMAN.

(Other proceedings were held but not  
included as a part of this transcript.)

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MR. SEARS: Thank you, Your Honor. What I'd  
like to talk about first is Number 12 on our list which is  
our Motion for Re-examination of Mr. DeMocker's Conditions  
of Release.

Your Honor, I recognize that we have -- this  
is the third time that we have been to you asking for  
modification but this motion is directly related to the  
way in which the last motion was resolved.

One of the circumstances that we alleged as a  
basis for a re-examination of Mr. DeMocker's release  
conditions had to do with what has become an  
extraordinarily serious problem inside the jail with his  
access to his own case materials.

Just to review, Your Honor, the written  
discovery from the State is ongoing. We received the 44th

1 supplemental disclosure from the State on Friday.  
2 Mr. DeMocker has had no access to his written discovery,  
3 just the basic discovery, since the 22nd supplemental  
4 disclosure. So we're at the midpoint. The Bates  
5 numbering system now, I believe -- and Miss Galon  
6 (phonetic) or somebody else might correct me, but I  
7 believe, we are now over 16,500 pages of documents.

8 In addition, there are more than 17,000 pages  
9 of documents not Bates labeled. There are more than 200  
10 CDs that contain documents, audio files, and video files  
11 that are in addition to the written discovery, and then  
12 there are all of the defense initiated defense materials  
13 that Mr. DeMocker needs to have and should have access to.

14 I think at the last hearing I had provided the  
15 Court with my own estimation of how much paper that is,  
16 that in an typical bankers box -- that the Court I'm sure  
17 is familiar with -- you can get -- depending on how  
18 tightly you pack them, something between 1500 and 2000  
19 pages of documents.

20 So if you would extrapolate from these  
21 numbers and you say -- just to round it off -- that there  
22 are 35,000 pages of documents -- the Court can do the math  
23 -- and say that that's probably about 20 bankers box worth  
24 of printed documents that has -- that's only the paper  
25 discovery, the audio files, the hundreds now of hours of

1 recorded jail calls in this case, all of the audio files,  
2 all the rest of those things are not susceptible of being  
3 reduced to print. If they were, then the number of  
4 printed documents would grow geometrically. We would be  
5 in the hundreds of thousands of pages of documents by that  
6 time.

7           The defense team in this case is  
8 geographically diverse and their ability to communicate  
9 with Mr. DeMocker in the jail is extraordinarily limited.  
10 Even my ability to talk to Mr. DeMocker is limited to  
11 either phone calls, which in a maddening way cut  
12 themselves off after about -- after less than 15 minutes.  
13 You get a series of recorded messages. So when I have to  
14 talk to Mr. DeMocker at length, he's constantly hanging up  
15 and redialing.

16           When Mr. DeMocker makes those phone calls,  
17 he's in the dorm. He's not in a room with a private  
18 phone. He will frequently have to get people to turn the  
19 television down. He has absolutely no privacy. He  
20 doesn't have any of his documents with him.

21           The jail has told him that -- and they came  
22 and took his documents away -- that he could have whatever  
23 fits in one of these plastic tubs that they have, that  
24 would be the maximum number of documents that he has. I  
25 can't relate a plastic tub to a bankers box, maybe it's

1 one or two bankers boxes in a tub.

2 Mr. DeMocker is not permitted to bring  
3 anything with him from the jail to Court. He's not  
4 permitted to bring any of his notes, any of his documents.  
5 When I give him things here, it's a burden on the  
6 detention officers who are here just doing their job.  
7 Every time I give Mr. DeMocker a hand full of pages, it  
8 requires them to review those, to look at them carefully  
9 to see what they are.

10 Mr. DeMocker has been throughout his  
11 incarceration completely unable to listen to any audio  
12 files. If there is a meeting with Mr. DeMocker in which  
13 we ask for a contact room, Mr. DeMocker is strip-searched  
14 after that meeting. The last count I had, was many months  
15 ago, and it was up over 75 strip-searches of a man who is  
16 presumed innocent in this case. It is virtually  
17 impossible for the members of our team to meet with  
18 Mr. DeMocker in any meaningful way.

19 In response to that the State made a number  
20 of assertions in writing and during the hearing that was  
21 conducted on our last release motion about what the jail  
22 would do. And, in essence, this was based on some  
23 discussions that I had with Mr. Butner that the jail would  
24 be willing to allow Mr. DeMocker to have access to a  
25 computer which now would have to have some sort of

1 additional storage device to contain all of what I've  
2 described here and the ability to listen to audio files  
3 and to look at video files -- he would have a place in  
4 the jail to do that, at least eight hours a day.

5 Now given the delay in doing this, that would  
6 have to be every day, that he would have a secured  
7 telephone in that place so that when he had access to his  
8 materials, he could talk with us in a way that's different  
9 than the way he is talking to me now.

10 Mr. Butner has told the Court that this was a  
11 slow process but that he was making progress. I hesitate  
12 to say this but, essentially, their response to this  
13 motion is, we're doing the best we can and this is a slow  
14 process.

15 I attached to my motion my correspondence to  
16 Mr. Butner where I was very specific about what we were  
17 talking about. As I stand here today on January 12th,  
18 2010, I do not have a response from Mr. Butner and his  
19 written response to the Court offers absolutely no  
20 additional specific information.

21 I believe that Mr. DeMocker's constitutional  
22 rights to an effective assistance of counsel and the  
23 ability to assist in his own case secured by the Sixth  
24 Amendment have been and continue to be violated by this  
25 circumstance.

1           The only way, Your Honor, that we can see  
2   that Mr. DeMocker can try to get back up to speed and  
3   meaningfully participate in his case is be out of the  
4   Yavapai County Jail. We have proposed to the Court very  
5   careful and very detailed circumstances that would  
6   guarantee his appearance, would answer, we think,  
7   completely any question of whether Mr. DeMocker is a  
8   flight risk in this case but would allow him over the last  
9   four months running up to his trial in this capital case  
10   meaningful access to his materials and the ability to  
11   assist us.

12           There is no one that knows this case better  
13   than Mr. DeMocker. Mr. DeMocker knows his own finances.  
14   He knows every single allegation against him but our  
15   ability to work with him and his ability to work with us  
16   has been hampered here.

17           If the State stands up now in response to  
18   what I've just said and says, we're working on it, we're  
19   doing this, anything other than, yes, we will do this, we  
20   will do it tomorrow, you can do this, and we'll enumerate  
21   and promise to the Court that all of these things will  
22   happen, anything short of that, Your Honor, is just a  
23   continuation of the approach that the State has taken, the  
24   sheriff's office has taken, is we're working on it, we're  
25   looking at it, we're thinking about it, we're doing the

1 best we can.

2 We are way too close to trial in this case to  
3 wait another day to get this done. This is as an  
4 important circumstance to us as to Mr. DeMocker as we can  
5 imagine. The thought of Mr. DeMocker going to trial under  
6 these circumstances, knowing almost nothing about the  
7 State's evidence over the last seven months now against  
8 him and being held essentially incommunicado and unable to  
9 communicate with his defense team, is a constitutional  
10 violation of the highest magnitude, and we are frustrated  
11 beyond imagination, Your Honor, at this situation.

12 And at this point I personally don't care  
13 whether it is the county attorney's office or the  
14 sheriff's office or some combination of the two of them  
15 that is responsible for this delay. This has to be  
16 resolved and it has to be resolved now.

17 We can't see another way for, Your Honor,  
18 that has Mr. DeMocker staying in jail, unless Mr. Butner  
19 is prepared to assure us today on the record exactly what  
20 the State will do and what the jail will do and nothing  
21 else. Thank you.

22 THE COURT: Mr. Butner.

23 MR. BUTNER: Judge, I'm looking at Mr. Sears'  
24 letter of December the 2nd, 2009, and I think the Court  
25 probably has already looked at it, and what I had told



1 Mr. Sears sometime ago was that, I believe, that the jail  
2 could provide Mr. DeMocker with a computer and a place in  
3 the jail where he could work on his disclosure, examine  
4 all of the materials and so forth, and then also a secured  
5 telephone line so that he could communicate with counsel  
6 and even experts on the same line from time to time.

7           And, I mean, when I say from time to time, I  
8 think that that would be on a regular basis, maybe as  
9 often as every day, I'm not sure about that, but I got  
10 this letter which talks about a whole bunch of other  
11 things; password protection for the computer, headphones  
12 to listen, an external storage device, private space  
13 within the jail that has a power outlet, Mr. DeMocker be  
14 given access to a private and secured telephone line to  
15 communicate for at least four hours per day, perhaps even  
16 a cell phone could be used, and then he may also have to  
17 have access to printed materials and photographs and then,  
18 of course, he would have to bring his laptop with him.

19           I tried to talk with Mr. Sears about this a  
20 couple of weeks ago and Mr. Sears and I are no longer  
21 talking. I have to communicate with Mr. Sears in writing.  
22 The computer is awaiting Mr. --

23           THE COURT: Before you move on, whose choice  
24 is that?

25           MR. BUTNER: Mr. Sears.

1 THE COURT: Go ahead.

2 MR. BUTNER: The computer is awaiting  
3 Mr. DeMocker, so to speak, in the jail. They can take him  
4 to a room that has a private plug and he will be alone  
5 there to deal with his discovery materials. I've been  
6 informed that this can be done eight hours per day,  
7 possibly even longer.

8 Secured telephone, he's not going to get a  
9 secured telephone line in that specific place. They have  
10 normal kinds of places set up for inmates to communicate  
11 with their attorneys. They can even do it by way of  
12 video, and I've told Mr. Sears that a long time ago, and  
13 Mr. DeMocker would be able to do that.

14 Mr. DeMocker would also be able to communicate  
15 with his attorney or attorneys on a telephone line, and  
16 although this is very much out of the ordinary, I was  
17 informed by the jail that if he needed to talk with  
18 experts, that the attorney could arrange for a conference  
19 call to plug in the expert on that line and so they could  
20 all talk together, that's available now, and that's the  
21 State's response.

22 THE COURT: Thank you.

23 Mr. Sears.

24 MR. SEARS: When Mr. Butner tried to speak  
25 with me a week ago yesterday about this I asked him to put

1 these matters in writing for just this reason.

2 Today for the first time, despite my letter of  
3 December 2, 2009, to him with these specific requests,  
4 this is the very first moment that Mr. Butner has  
5 communicated to us and any one on the defense team any of  
6 this information. This has never been communicated  
7 before.

8 Mr. Butner has not yet explained what computer  
9 we're talking about. Is it a computer that we provide  
10 with the materials on it? That's why we had talked about  
11 a computer that was password protected. We were not  
12 adding additional requirements to be difficult. We were  
13 trying to anticipate issues in advance of this discussion.

14 Headphones make sense because there is a  
15 matter of privacy for these calls. The headphones plug  
16 into the computer. They are easy to store. We still  
17 don't understand from what Mr. Butner has said how these  
18 materials will get on this computer unless we provide the  
19 computer with materials on them and update them. We're  
20 willing to do that.

21 If Mr. Butner's suggesting that, for example,  
22 we gave Mr. DeMocker an array of CDs to play, the jail  
23 won't let him have those CDs. There's no place in the  
24 jail to keep those. They're not private and they're not  
25 secured, and that's why we talk about a simple password

1 inscription for the computer so that everyone, including  
2 Mr. DeMocker, would feel comfortable that these materials  
3 are for his eyes and his eyes only.

4           The idea that Mr. DeMocker would not have  
5 access to a telephone in the place where the computer is  
6 is a problem because in a conference with experts or with  
7 us or with our staff or investigators it is critical that  
8 Mr. DeMocker have access to what we're talking about.

9           It makes sense in the simplest case, in the  
10 simplest case, when you're talking to your client and  
11 there is a photograph or document you want to be able to  
12 show your client the photograph or the document. Having  
13 access to a phone near the computer only makes sense.  
14 That's the way it would work. If Mr. DeMocker needed to  
15 look at Bates 1485 to see what that was, Mr. DeMocker  
16 could do it. Otherwise every time we go to see  
17 Mr. DeMocker we have to bring all of the discovery in the  
18 case with us. In addition, the discovery in this case is  
19 cumulative.

20           It's not appropriate for Mr. DeMocker to only  
21 have access to bits and pieces of it. All of it is  
22 interrelated. It's all about the same sort of events.  
23 The same source of conduct. So what's in the 44th  
24 supplemental disclosure relates to everything that has  
25 gone forward with the 43 supplemental disclosures before

1 that, not to mention the work that we have generated in  
2 this case.

3 I proposed a cell phone because I thought that  
4 was something that could be done that would resolve --  
5 perhaps if there's a cell phone signal deep inside the  
6 jail there -- the question of where the telephone was and  
7 how to get the telephone into the room where Mr. DeMocker  
8 and the computer were, that was all that was designed to  
9 do.

10 I talked to, Your Honor, about this video  
11 conferencing system and I think that you indicated that  
12 you had some familiarity with it. It is anything but  
13 secured. It can only be used in 30 minute blocks on a  
14 schedule that is coordinated between the jail and the  
15 public defender's office. I have used it.

16 Mr. DeMocker -- the video conferencing  
17 system, unless they have changed it in the last year,  
18 would require Mr. DeMocker to be taken to a room off of  
19 the old courtroom in the jail that is not sound proof, has  
20 a window in it.

21 You might remember, Your Honor, that I said  
22 that one of the few times that I tried to use it at the  
23 beginning of the case I said something in my normal  
24 speaking voice and while I was there I could see the  
25 detention officer in the back snap his head around and

1 look directly at Mr. DeMocker in the room. So I know  
2 based on that simple exercise that that is not a secure  
3 facility.

4 Taking Mr. DeMocker to some unspecified place  
5 to make phone calls where inmates make phone calls, is  
6 what I just told you, is from the phones inside his dorm  
7 with 30 some other inmates around ready to use the phone.  
8 Mr. DeMocker can't use that phone for four hours at a time  
9 and survive inside the jail. Mr. DeMocker doesn't have  
10 his materials there. It's not private. It's not secure.

11 So despite the State's insistence that they  
12 have solved this problem, they really haven't. They  
13 really haven't. And today I submit is the day that we  
14 need to decide whether this is enough or whether something  
15 else should be done. And I am dismayed that Mr. Butner's  
16 suggesting that somehow this situation is due to some lack  
17 of some communication on our part. It's a simple matter.  
18 If you have specific information, put it in writing. If  
19 you don't want to send it to me, file it with the Court,  
20 just tell us what the circumstance is.

21 In addition -- in addition, Mr. Butner has  
22 made promises in this case in writing and in Court that  
23 have not yet been kept and to say today that this is ready  
24 to go and this could happen is disingenuous, Your Honor.  
25 It's not likely.

1 I think if we took a recess and went over to  
2 the Camp Verde Jail and said, where's the computer,  
3 where's the phone, where's the room, it wouldn't be there  
4 and wouldn't have happened.

5 I had proposed to Mr. Butner that we meet  
6 with the administration of the jail. Mr. Butner told me  
7 that that was not necessary, that this could be done. I,  
8 frankly, don't believe this is any where close to  
9 happening, nor do I believe even if it were ready today  
10 that it's any where near sufficient to guarantee  
11 Mr. DeMocker his constitutional right to his own case  
12 materials and to meaningfully assistance his counsel in  
13 his defense in this most serious of cases.

14 THE COURT: Mr. Butner.

15 MR. BUTNER: Jail Commander Russell informed  
16 me that they have the computer. It is a computer that the  
17 county had. It was one of the computers that the county  
18 was using. It's a clean computer, so to speak. They have  
19 been in possession of that for a little while now,  
20 indicated that Mr. DeMocker can be taken to this room in  
21 the jail where he could, as I stated earlier, work on his  
22 materials for at least eight hours a day and it may be  
23 longer than that, Judge.

24 And I guess I didn't directly address the CDs  
25 discussion but that's my understanding that Mr. DeMocker

1 can be provided with these CDs by his defense team and he  
2 can review these CDs of the disclosure materials with the  
3 computer in the jail, that would be whole point of all of  
4 that.

5 The telephone, no. They're not going to give  
6 him his own telephone in that private cell while he works  
7 on his disclosure materials. He will have access to the  
8 secure telephone system to communicate with his lawyers as  
9 I've previously described. Thank you.

10 THE COURT: And what are the limitations on  
11 the time with regard to that?

12 MR. BUTNER: I don't know about the  
13 limitations on time, Judge. I really don't. I'd have to  
14 inquire further about that. I'm pretty sure he won't be  
15 able to be on the phone for four hours at a time  
16 discussing things with his defense attorneys. That's, you  
17 know, generally not permitted in the jail as I understand  
18 it.

19 THE COURT: What -- do you know what is,  
20 though --

21 MR. BUTNER: I really don't.

22 THE COURT: -- one or two hours?

23 MR. BUTNER: I really don't know. I have to  
24 inquire further about that and I will do that.

25 THE COURT: What is the issue, if there is an



1 issue, with regard to a computer and if necessary an  
2 external hard drive that Mr. Sears and the defense would  
3 provide for Mr. DeMocker's use?

4 MR. BUTNER: I don't think that -- first of  
5 all, it's a big exception for the jail to have this kind  
6 of situation with a computer in the first place. I don't  
7 think that they want any kind of external computers  
8 brought into the jail.

9 I think they want to have a computer that  
10 they are able to examine, so to speak, and make sure that  
11 nothing has been broken off of it or could be used in any  
12 other fashion other than for the purposes which the  
13 computer would be used for.

14 THE COURT: If he's subject to intimate  
15 searches coming and going from the particular room, what's  
16 the security issue?

17 MR. BUTNER: Judge, I don't really know, and I  
18 don't know if he's subject to those kinds of searches  
19 coming and going from the room. I think that he will  
20 never leave the confines of the jail. They have a special  
21 room set up for him to use for this. I think that's  
22 basically the situation.

23 THE COURT: Thank you.

24 MR. BUTNER: And also in regard to his -- just  
25 to clarify too, in regard to his written materials, it's

1 my understand that he would be able to have access to  
2 those written materials along with the computer and the  
3 CDs if necessary.

4 THE COURT: Mr. Sears.

5 MR. SEARS: Here we are again, the jail has  
6 said that Mr. DeMocker may have what amounts to a few  
7 thousand or less pages of his discovery at a time.

8 The jail has not made any offer whatsoever --  
9 because I know they won't and I know they can't -- to  
10 store his other documents and essentially act as Mr.  
11 DeMocker's librarian and say I need the following  
12 documents, nor would they be willing, I assume, to be the  
13 librarians for hundreds of CDs. We simply have --

14 THE COURT: Whereas if you have digital  
15 storage and that sort of thing, you can do one external,  
16 and do you think you can get everything that you need  
17 between the computer and the one external --

18 MR. SEARS: We --

19 THE COURT: -- where they wouldn't be having to  
20 store voluminous materials?

21 MR. BUTNER: Excuse me --

22 MR. SEARS: That is what we had in mind, Your  
23 Honor, but we also have to have access to that on a  
24 regular basis.

25 If the State is going to continue to

1 disclose, as they apparently are, you know, on a weekly or  
2 biweekly basis, we'd have to have access to that to load  
3 the new materials into this computer but the point of this  
4 is that it all works together.

5 Mr. DeMocker then has -- assuming somehow the  
6 jail would change their mind about this, Mr. DeMocker has  
7 a state-of-the-art computer with all the storage and his  
8 entire case on the computer.

9 THE COURT: And, therefore, access to audio  
10 and video?

11 MR. SEARS: Audio, video.

12 THE COURT: Sure.

13 MR. SEARS: All of this information -- all of  
14 the privileged information that we would want him to have  
15 that we have generated in this case, that's step one, and  
16 I've not heard any suggestion that the jail is willing to  
17 do that, that the State's prepared today to say that the  
18 jail will do that.

19 Number 2, when he has that material, then  
20 Mr. DeMocker as he's working through it, has to have  
21 regular secure access to us. Mr. DeMocker just told me  
22 that the phones that Mr. Butner is talking about, the  
23 secure phones, are shared by 40 inmates and there are  
24 three phones and they are inside the dorm and no one  
25 inmate could conceivably, whether the jail had a rule or

1 not, monopolize any one of those phones for very long.

2 I think the longest phone conversation I may  
3 have had with Mr. DeMocker might have been 30 or 40  
4 minutes, measured by the number of times -- as we come  
5 down they give you a three minute, a two minute, a one  
6 minute, this call will be disconnected prompt, and I think  
7 our record is to get into the third such call, one right  
8 after the other, but even then, when I'm talking to  
9 Mr. DeMocker he is having -- I can hear him explaining to  
10 other inmates that he'll be off shortly, could you turn  
11 the television down, the phones are near the television  
12 there, and Mr. DeMocker would have none of his files.

13 So if I said to Mr. DeMocker over the phone  
14 let's take a look at these photographs, he doesn't have  
15 them. He wouldn't have them and he couldn't have them.  
16 That's the practical problem. That problem is multiplied  
17 by the inability of him to confer with experts and  
18 investigators who each have a particular area of expertise  
19 and would absolutely have to review materials. If they  
20 have materials to review, they need to review them with  
21 Mr. DeMocker.

22 You remember Mr. Curry, our financial fraud  
23 forensic accountant in this case, he has been given tens  
24 of thousands of documents now over the course of his  
25 engagement in this case to review and he has not yet been

1 able to sit with Mr. DeMocker and ask Mr. DeMocker  
2 questions. The answers to which, I think, only  
3 Mr. DeMocker has, what was this about, what were you  
4 thinking here, how did you handle this, what did you do  
5 when you got this request, that's absolutely critical work  
6 going forward in this case, if those matters remain at  
7 issue in this case.

8 All we have done, Your Honor, in my opinion,  
9 today is just move the ball forward a yard or two. We're  
10 less than four months from trial. I don't know if  
11 Mr. DeMocker's spent 20 hours a day, realistically, that  
12 he could actually listen to and look at every single thing  
13 in his case, but I do know that in the previous six months  
14 he has had zero ability to do that, and what he learns  
15 about the case is what I tell him, basically, and what he  
16 learns in Court and what I send him in letters, and that's  
17 the sum total of what Mr. DeMocker knows about the last  
18 half of disclosure in this case and the reason for that is  
19 the way in which he is being held at the county jail.

20 I will tell you personally that I think that  
21 notwithstanding what Commander Russell and jail  
22 administration tell Mr. DeMocker, jail staff at the  
23 sergeant and D.O. level will say and do other things and  
24 Mr. DeMocker's day-to-day management is under their  
25 control and not directly under jail administration's

1 control.

2           Whatever concerns you had, Your Honor, that  
3 caused you to set bond at the amount it is now and to deny  
4 our two previous requests, whether it is Mr. DeMocker's  
5 flight risk or any of the other circumstances can be  
6 resolved. For example, if you are concerned, Your Honor,  
7 about just the idea that Mr. DeMocker being present in the  
8 community, given the nature of these charges, we would  
9 agree to virtual house arrest if Mr. DeMocker could simply  
10 be monitored electronically at one location.

11           And if you were uncomfortable with that  
12 location being here, we would have Mr. DeMocker in Phoenix  
13 near his lawyers and the rest of my team in Phoenix, if  
14 that was more appropriate for the safety and sensibilities  
15 of the community. It really doesn't matter to us.

16           What does matter to us in the most  
17 significant way possible is that Mr. DeMocker, the most  
18 significant piece of our resource base is of no use to us  
19 at this point under the circumstances. There is very  
20 little that we can do other than on an issue by issue  
21 basis ask him a question or two at a time in a phone call,  
22 that is about the limitation, or go over as I do,  
23 essentially every Friday, and spend a couple of hours with  
24 Mr. DeMocker trying to review the events of the week.

25           Even then if I want to sit with Mr. DeMocker

1 in a room and show him the documents, Mr. DeMocker gets  
2 strip-searched at that point. And, you know, he's willing  
3 to do that and has submitted to that, as I said probably  
4 now, probably 90 times, but I stopped doing that. I  
5 didn't want Mr. DeMocker to have to go through that  
6 indignity just to be able to sit in a room with his lawyer  
7 in this case.

8 Mr. DeMocker is subject to bond. Bond as we  
9 have pointed out is for the sole purpose of assuring his  
10 appearance at Court. As we have said before and will say  
11 again today it is inconceivable that Mr. DeMocker would  
12 run from this evidence and this case with what's at stake  
13 and what his running would do to his family, to his  
14 parents, to his children, to all of the people that love  
15 and care about him in this case, but having Mr. DeMocker  
16 out would make it possible at last for Mr. DeMocker to  
17 become part of his own defense. Thank you.

18 MR. BUTNER: Judge, to clarify, it's my  
19 understanding that the CDs would be kept there with the  
20 computer by the jail personnel and then be provided to  
21 Mr. DeMocker. Maybe I did not make that clear. So I  
22 think as Mr. Sears characterized it, I guess, they would  
23 sort of be his librarians in that regard.

24 Judge, it sounds to me like that, you know,  
25 this really is, again, another motion by the defense to

1 get Mr. DeMocker out of jail and we're revisiting that and  
2 I don't think we should be doing that. As I stated the  
3 computer awaits and I would hope that we can resolve this.

4 THE COURT: I'm going to enter an order  
5 denying the request for modification of release but I will  
6 enter an order, Mr. Sears, with regard to affirming the  
7 Defendant's ability to assist in his own defense.

8 I'm going to require the -- and if the State  
9 can't do that, it violates the Defendant's Sixth Amendment  
10 right to counsel and participate, then I'll have to  
11 reconsider this, but I will order the Yavapai County Jail,  
12 the Yavapai County Sheriff to provide the Defendant with a  
13 secure room. The computer to be provided by the defense  
14 team with external hard drive and plug. The secure room  
15 has to have a power plug so that he can plug in and won't  
16 be dependent on battery power.

17 I'm putting no restrictions on the ability of  
18 the county sheriff's office to provide for the security of  
19 the facility in terms of they do whatever wandering or  
20 searching that they may normally and routinely do to  
21 assure the safety of this inmate and any other inmates in  
22 the Yavapai County Jail.

23 So I'm not restricting in any way their  
24 ability to do that but I think that the computer simply  
25 makes too much sense. A computer provided by the defense



1 that's preloaded with the information that is already part  
2 of the record and disclosure with the Bates stamping and  
3 video clips and audio clips and photography.

4 Frankly, there shouldn't be that much more in  
5 the way of discovery that comes out. We're suppose to be  
6 progressing to the presentation of the case and I viewed  
7 this week as tuning that up so that we can all be ready to  
8 go by the time trial starts in May which has been pointed  
9 out is less than four months away.

10 So external hard drive is authorized and  
11 whatever wires that may be necessary to do that, and I'll  
12 authorize the Defendant to have up to eight hours a day --  
13 or excuse me -- not up to, at least eight hours a day in  
14 this secure room for purposes of his review of these  
15 materials.

16 I guess I would like to know why he can't  
17 have a secured phone line in the room. So I'll order that  
18 if such a phone line be evaluated as to why we can't have  
19 it in this particular room or whether it's not wired for  
20 that, and what proposals you all may have for an  
21 alternative to that so that the access in particular to  
22 the financial expert and the defense attorneys with the  
23 Defendant, but the headset is necessary seems to me also  
24 to maintain privileged materials from being overheard and  
25 this, in essence, is no different than attorney-client

1 correspondence. It's just in a digital form.

2           Would I enter such an order in a common case?  
3 I probably wouldn't, but we're dealing with a significant  
4 case that's getting right up toward the trial time and I  
5 want the defense team to be able to be prepared to protect  
6 effective assistance of counsel, rights that the Defendant  
7 has.

8           So I'm not going to limit Mr. DeMocker and  
9 Mr. Sears to a county computer. I don't see any real  
10 claim for hazard to the security of the jail with regard  
11 to that. If the jail can search him to make a  
12 determination that he's not taking anything back to the  
13 dorm that shouldn't be taken back to the dorm. They can  
14 do what they want as far as security. If they don't want  
15 him to have the computer in the dorm for obvious reasons,  
16 they don't have to do that but he needs to have access for  
17 a significant time of each day, seven days a week, so that  
18 he can review the materials that are necessary to review  
19 to be prepared for the trial, and this may be password  
20 protected, Mr. Sears.

21           If you want to file a proposed formal order  
22 that's more specific that you can have served on the  
23 sheriff or Commander Russell, that's fine. I expect that  
24 with this, probably in lieu of printed materials, a  
25 computer would take up less space than the printed

1 materials would, even with the additional devices that are  
2 required, and it wouldn't be necessary to have anybody  
3 acting has a librarian or accessing separate CDs and the  
4 like. It can all be put on the external hard drive.

5 MR. SEARS: I think that's true, Your Honor.  
6 I had a couple of clarifying questions here.

7 THE COURT: Go ahead.

8 MR. SEARS: Would you please set a date for an  
9 answer from the sheriff's office about the secure phones  
10 so this matter, that part of it, doesn't drag on  
11 indefinitely.

12 THE COURT: Friday.

13 MR. SEARS: Thank you. And your reference to  
14 the password protection answered one of my other concerns  
15 about having access to this. As a practical matter I  
16 assume that the jail would not allow Mr. DeMocker to keep  
17 this in his cell?

18 THE COURT: I assume.

19 MR. SEARS: So there has to be someplace that  
20 it's kept but if it's password protected, then I'm not  
21 concerned. Although an external hard drive could be  
22 unplugged and looked at. I don't know enough about  
23 inscription to know if we can inscript what's on the hard  
24 drive but I think we probably can.

25 It's just -- there's going to be, in addition

1 to public record stuff in here, a considerable amount of  
2 attorney-client privilege material that he should have in  
3 a privileged way. I appreciate the Court's willingness to  
4 look at the password protection and we will have to find a  
5 way to do that.

6 We will also need access -- I will put this in  
7 the order -- we will need access periodically to update  
8 the computer with information as it comes in.

9 THE COURT: I don't have any issue with regard  
10 to that. I think you need access.

11 MR. SEARS: You're just going to have let us  
12 or whomever I bring with me that knows more than I do  
13 about this to -- which would be virtually anybody -- to  
14 update this information. We will do this as quickly as we  
15 possibly can.

16 THE COURT: Okay. Anything else on that that  
17 needs additional clarification?

18 MR. SEARS: Your Honor, I'm sorry, one more  
19 clarifying -- given the press for time we would ask that  
20 since every day in the jail is a working day that he be  
21 allowed access seven days a week. I can't think of a  
22 reason for him to have days off.

23 THE COURT: Yeah. And I think we can start  
24 this as soon as I sign the order and you have it served on  
25 the jail commander or Sheriff Waugh whichever you may

1 choose. I think either one is appropriate. And --

2 MR. SEARS: Thank you.

3 THE COURT: And copy obviously -- actually,  
4 what I would ask you to do is have Mr. Butner review it as  
5 to form before I even sign it so that any additional  
6 clarifying language can be addressed.

7 MR. SEARS: Thank you.

8 THE COURT: Which will be no later than Friday  
9 morning.

10 MR. SEARS: Yes, sir.

11 THE COURT: Okay. Let's take a break for the  
12 staff and you all. About 10 minutes. We'll resume at  
13 quarter to 11.

14 (Whereupon, the noon break was taken.)

15 (Other proceedings were held but not  
16 included as a part of this transcript.)

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## R E P O R T E R ' S   C E R T I F I C A T E

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the foregoing pages 1 through 29 constitute a full, true, and accurate partial transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 16th day of January, 2010.



LISA A. CHANEY, RPR, CSR, CR  
Certified Reporter  
Certificate No. 50801

LISA A. CHANEY, CR, RPR  
CERTIFIED REPORTER

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